DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2003-17140]
RIN 2127-AI88

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In response to a petition from a child restraint manufacturer, the agency issued an interim final rule published on October 22, 2002, and amended on November 28, 2003, adopting a temporary provision permitting the manufacture of harnesses for use on a school bus that attach to a school bus seat back. Harnesses and other types of child restraints are otherwise generally prohibited by the standard from having any means designed for attaching the system to a vehicle seat back. The provision is set to terminate on September 1, 2004.

This final rule eliminates the termination date for that provision, thus extending indefinitely the permission for manufacture of the harnesses. The harnesses must bear a warning label informing users that the harness must be used only on school bus seats, and that the entire seat directly behind the child wearing the seat-mounted harness must be either unoccupied or occupied by restrained passengers.

DATES: Effective Date: The amendments made in this rule are effective on September 1, 2004. Petitions: Petitions for reconsideration must be received by April 23, 2004.

ADDRESSES: Petitions for reconsideration, identified by DOT DMS docket number of this notice, should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590:

For technical issues: Mr. Tewabe Asebe, Office of Rulemaking, NVS-113, telephone (202) 366-2365, facsimile (202) 493-2739.

For legal issues: Mr. Christopher Calamita, Office of Chief Counsel, NCC-112, telephone (202) 366-2992, facsimile (202) 366-3820.

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I. Introduction

This document permanently adopts the interim amendments to Federal Motor Vehicle Safety Standard (FMVSS) No. 213, Child restraint systems (49 CFR 571.213), which excluded properly labeled harnesses manufactured for use on school bus seats from the prohibition in that standard against child restraints that are designed to attach to a vehicle seat back. A harness restraint system consists primarily of flexible material, such as straps, webbing or similar material, and that does not include a rigid seating structure for the child.

(FMVSS No. 213 uses the term ``harness'' in specifying requirements for this type of child restraint system. We consider the terms ``vest'' and ``harness'' to be interchangeable. However, in this preamble we use the term ``harness'' to maintain consistency with the regulatory language. However, we re-emphasize our belief that the terms are synonymous.)

II. Background

On October 22, 2002, NHTSA published an interim final rule to permit the temporary manufacture of harnesses designed to attach to school bus seats. (67 FR 64818; Interim Rule). The Interim Rule was adopted to facilitate the transportation of preschool and special needs children and to relieve the restriction imposed by FMVSS No. 213 for the new school year.

The Interim Rule responded to a petition for rulemaking from Constance S. Murray (Petitioner), president of E-Z-On Products, Inc. (E-Z-On), requesting that NHTSA amend the prohibition against seat-mounted harnesses in S5.3.1 of FMVSS No. 213 in order to allow their manufacture and sale for use in school buses. S5.3.1 provides:

> (e)xcept for components designed to attach to a child restraint anchorage system, each add-on child restraint system shall not have any means designed for attaching the system to a vehicle seat cushion or vehicle seat back and any component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back.

The petition was submitted in response to an agency interpretation letter in which we determined that a product with straps that ``wrap the seat back and are independent of the seat belt'' was subject to FMVSS No. 213 and

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that such a product did not meet the standard's prohibition against child restraints that attach to the vehicle seat back.\1\ Petitioner submitted documentation of the current usage of seat-mounted harnesses in school buses along with accounts of crashes in which a seat-mounted harness was used and that there were no injuries reported or described. Subsequent to NHTSA's receipt of the petition, a number of pupil transporters wrote identical ``petitions'' to NHTSA in support of the E-Z-On petition.

\1\ See agency interpretation letter to Kathy Durkin (Hold Me Tight Products), August 31, 2001. In that letter NHTSA discussed S5.3.1. The letter explained that child restraints are prohibited from attaching to the vehicle seat back because they will load the seat back in a crash. The seat back might not be able to withstand the additional load applied to it by an attached, occupied child restraint. NHTSA concluded the letter by stating that child restraints that are designed to attach to a vehicle seat back do not meet S5.3.1.

The Interim Rule amended FMVSS No. 213 to exclude harnesses manufactured and sold for use on school bus seats from the prohibition in S5.3.1, thereby permitting the manufacture and sale of seat-mounted harnesses for pupil and Head Start transportation. NHTSA stated that it believed that permitting the manufacture and sale of seat-mounted harnesses for use on school buses would enhance the safe transportation of preschool and special needs children, provided that certain conditions were met to ensure that the seat back would not be overloaded in a collision and subject to failure. To prevent such failure, the entire seat directly rearward of a child restrained in a seat-mounted harness must remain vacant or occupied by restrained passengers. Under the Interim Rule, the agency required that harnesses manufactured on or after February 1, 2003, must bear a permanent warning label, set forth in Figure 12 of the standard, in order to be excluded. The label must be placed on the part of the restraint that attaches the harness to the vehicle seat back, and must be visible when the harness is installed. It must contain a pictogram and the following statement: ``WARNING! This restraint must only be used on school bus seats. Entire seat directly behind must be unoccupied or have restrained occupants.''

The label must state that the restraint is manufactured for use only on ``school bus seats'' rather than on ``school buses.'' The reference in the Interim Rule to ``school bus seats'' accommodates the possible use of seat-mounted harnesses on alternate vehicles, as defined by the Department of Health and Human Services final rule published on January 18, 2001, which are not school buses, but which have school bus seats (66 FR 5296). A school bus seat is a seat in a vehicle that meets FMVSS No. 222, School bus seating and crash protection (49 CFR Sec. 571.222).

The Interim Rule also added a definition of ``harness'' to the standard. The definition of a harness is ``a combination pelvic and upper torso child restraint system that consists primarily of flexible material, such as straps, webbing or similar material, and that does not include a rigid seating structure for the child.'' As noted previously, we consider the term ``harness,'' to be interchangeable with the term ``vest,'' which is commonly used to describe seat-mounted restraints.

The Interim Rule made several other amendments to FMVSS No. 213 relating to the exclusion. It amended S5.3.2 and an accompanying table specifying the means of attachment by which a harness must be capable of meeting the requirements of FMVSS No. 213. The table in S5.3.2 was modified to provide that harnesses designed for use on school bus seats must be capable of meeting the requirements when attached to the seat

back by a seat mount. The Interim Rule also amended the table to S5.1.3.1(a) of the standard, which specifies the head and knee excursion requirements that add-on forward-facing child restraints must meet.

In addition, the dynamic test procedures of the standard were amended to specify procedures for testing seat-mounted harnesses. Up to that time, the procedures had reflected attachment of add-on child restraints by a lap belt, lap belt and tether, lap and shoulder belt, and child restraint anchorage system. Seat-mounted harnesses are not attached by those means. Accordingly, S6.1.2(a)(1)(i)(A) and S6.1.2(d)(1)(ii) were revised to include specifications appropriate for the manner in which seat-mounted harnesses are attached.

NHTSA determined that it was in the public interest to make the changes effective immediately on an interim basis until December 1, 2003. We also requested comments on the Interim Rule and on whether to amend the standard permanently. The termination date was subsequently extended until September 1, 2004. (68 FR 66741; November 28, 2003.)

III. Public Comments

The agency received 100 comments on the Interim Rule, including comments from state departments of education, school transportation associations, public and independent school districts, school bus transportation facilities, school bus operators, Head Start programs, individuals employed in the pupil transportation industry, physical therapists, child restraint manufacturers, the University of Michigan Transportation Research Institute (UMTRI), the American Academy of Pediatrics, and a certified child passenger safety technician. A large majority of the 100 commenters supported adopting a permanent exclusion for harnesses manufactured and sold for use on school bus seats from the prohibition against such a design.

While there was general support for the interim rule becoming permanent, some commenters raised concerns regarding the warning label text and placement. They were particularly concerned with the requirement for the label to contain the following statement: ``Entire seat directly behind must be unoccupied or have restrained occupants.'' Comments were also received on the use of the harnesses on non-lap-belt ready school bus seats and on the specific test conditions of the standard.

Ten comments were received in opposition to extending the exception adopted in the Interim Rule. Several of these comments raised issues not related to the design or use of the harness, such as excessive vehicle speed and school bus driver fatigue, and as such were beyond the scope of the rulemaking. The relevant opposing comments cited concerns about the effects of harness use on evacuation, use difficulties (e.g., children pulling on excess webbing and unwillingness of students to remain restrained), and the potential for false charges of sexual abuse arising from school bus operators securing the harness crotch straps.

A. Warning Label--Seating Configuration

Several commenters objected to or had concerns about the labeling requirement as adopted in the Interim Rule. James Fey, North Florida Child Development, Inc., Montgomery County Schools Department of Transportation, Earl Henry, and Robin Melton stated that because the warning directs that the seat behind the harness-restrained child remain vacant or contain a restrained individual, more buses would be

required to transport the same number of children. Montgomery County Schools Department of Transportation also commented that, in the past, there had not been any issue with

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unrestrained children sitting directly behind harness-restrained students.

Robin Melton asked that the agency consider a ``size of child'' stipulation for this warning, possibly amending the warning language to state that unrestrained students between the grades of kindergarten through second grade could be seated directly behind a safety harness-restrained child. Several commenters asked for clarification of the term ``restrained passenger.''

UMTRI commented that the warning requirement is based on the results of severe frontal impact test conditions that are unlikely to occur in the foreseeable future for school bus transportation. UMTRI argued that the warning not to place any unrestrained children behind safety harness-restrained children is inappropriate and unreasonable.

B. Warning Label--Required Language

UMTRI commented that the warning label should be changed from, ``Warning! This restraint must only be used on school bus seats. * * *'' to, ``Warning! This restraint must only be used on school buses when installed by attaching to the seatback. * * *'' UMTRI stated that the current language assumes that harnesses cannot be installed in a more conventional manner (one not requiring a seat-mount for attachment) that complies with the current FMVSS No. 213.

C. Other Warning Label Issues

Some commenters stated that the warning label should be placed on the ``cam wrap'' and not the harness. Peter J. Grandolfo, Chicago Public Schools, suggested that a warning label should also be placed in a conspicuous spot on the bus interior to advise personnel on the safe use of harnesses.

E-Z-On suggested that CRS manufacturers provide a similar warning concerning unrestrained occupants on rear-facing child systems that would be installed on school bus seats. E-Z-On stated that rear-facing seats required similar warning labels because ``in a dynamic situation, infant seats are designed to move towards the seat back, while the back of a school bus seat is designed to flex forward.'' E-Z-On also suggested that currently used seat-mounts should have a warning label.

D. Lap-Belt-Ready School Buses

One commenter requested that the final rule distinguish between school bus seats and lap-belt-ready school bus seats. The commenter stated that because of additional forces placed on the school bus seat by a harness that attaches to a seat back, such a harness could only be used safely on a lap-belt-ready school bus seat.

E. Test Conditions

Q'Straint commented that the resultant acceleration limits at the location of the upper thorax be reviewed due to the difficulties in all harnesses meeting the requirement of S5.1(b) of FMVSS No. 213.

Q'Straint also suggested utilizing a regular FMVSS No. 222 approved school bus seat for testing harnesses instead of the FMVSS No. 213 bench seat, stating that this would be more representative of real world usage.

E-Z-On commented that tightening the tension of the seat-mount strap to not less than 53.5 N and not more than 67 N, as required by the Interim Rule, could affect the dynamic performance resulting in failure. E-Z-On suggested that the range be expanded from 67 N to 132 N. Because installation instructions for the seat-mounted harness require the seat-mount strap be tightened as much as possible, E-Z-On argued that the 67 N minimum would be more representative of actual installation.

F. Emergency Evacuation and Use Difficulties

Three commenters raised concern with the potential impact of harness use on school bus evacuation time. Commenters raised the possibility that more time may be required to remove a child from a safety harness than from other types of child restraints. One commenter stated, ``[W]e have timed a [sic] evacuation drill and it approximately takes the driver and aide 12 minutes to get all children unfasten [sic] and off [sic] bus to safety. We believe that is too long.''

One of these commenters expressed concern about the potential for excess webbing to hang off the portion of the restraint that attaches to the seat back. She stated that other children could possibly pull on the excess webbing and injure the child secured in the harness. A different commenter expressed concern that children would choose not to stay in the restraints.

F. Use of Crotch Straps

One individual commented that the use of crotch straps on the harnesses might result in mistaken claims of sexual abuse against those individuals fastening children in the harnesses. This commenter was particularly concerned with children unable to fasten themselves and who required adult assistance. However, a separate individual stated that in practical use, this problem had not been encountered.

IV. Response to Comments

A majority of the commenters supported making no changes to the provisions adopted in the Interim Rule. Even among commenters who raised issues with specific portions of the rule, there was a general consensus that child restraint systems that attach to the seat back and are manufactured and sold for the exclusive use on school bus seats should be permitted.

A. Warning Label--Seating Configuration

The portion of the warning label stating that the seat directly behind the harness-restrained child should either remain unoccupied or be occupied only by restrained passengers attracted the most comments. Representatives from child transportation organizations, schools, and individuals were concerned that this warning would necessitate an increase in the number of school buses because of the loss of seating positions. UMTRI commented that this language was based on severe frontal impacts that are not representative of real world crashes.

The agency is adopting the warning language as it exists in the

Interim Rule. This labeling requirement was based on data that showed an increase in the head injury criteria (HIC) values of a harness restrained HII-3-year-old test dummy (HII-3YO) seated in front of an unrestrained 50th percentile male test dummy. In testing, when unrestrained 50th percentile male test dummies were seated directly behind restrained HII-3YOs, the HIC values for three of the four HII-3YOs were above the limit set forth in S5.1.2 of FMVSS No. 213. The high HIC values were a result of overloading of the seat back during a frontal crash by unrestrained passengers seated behind it. This danger is magnified when a mix of special needs and pre-K to 12th grade students with varied weight distributions are transported on a single bus. As reflected in comments by Earl Henry and Mark E. Wagstaff, some Headstart programs coordinate transportation with the local school districts. This creates a potential for children of disparate sizes (pre-K and high school students) to be seated on the same bus. Also, as pointed out in comments from Terri Wontrobski, adult bus monitors might sit behind harness-restrained children. Seating a large, full grown unrestrained 12th grader directly behind a seat-mounted-harness-restrained pre-K student could result in forces on the seat back in a crash that would generate a HIC value above the allowable limit for the pre-K

student, potentially resulting in injuries to that pre-K student.

From some of the comments received, it appears that there is a misunderstanding as to the meaning of the warning. The warning does not direct that the seat directly behind the harness-restrained child remain empty. The warning states that this seat should remain unoccupied or occupied only by restrained passengers. As we have previously explained in the preamble to the Interim Rule and in a subsequent interpretation letter,\2\ the term ``restrained'' refers to the use of any type of user appropriate vehicle restraint or child restraint system. This includes lap belts, lap and shoulder belts, booster seats, child seats, and harnesses.

\2\ See agency interpretation letter to Ms. Lori Crouzillat (E-Z-ON Products, Inc.), March 13, 2003.

Robin P. Melton asked the agency to establish a ``child size'' threshold for the warning. In general, we agree that an unrestrained 6-year-old seated directly behind a harness-restrained 3-year old child may not cause the severe injury measurements that might occur if an adult equal in size to the 50th percentile male sat behind the 3-year-old. However, the agency does not have the data or resources to determine a threshold weight limit below which it would be safe to place an unrestrained student directly and immediately behind a harness-restrained student. Even if the agency were able to determine such a threshold, it could confuse the warning and make it less effective. Further, a weight threshold could prove impractical to follow because such a warning would necessitate vehicle operators and caregivers determining the weight of each child being seated in the school bus seats.

UMTRI commented that the test procedures used to justify the

warning language were not representative of crashes experienced by school buses. As stated in the preamble to the Interim Rule, the test conditions represented a 30 mile-per-hour (mph) small school bus crash with a vehicle of comparable mass traveling at the same speed. These crash conditions take into account the fact that harness-restrained children will be transported on small school buses and multifunction school activity buses.\3\ So long as school children are transported in smaller vehicles with school bus seats, there is a likelihood for crash conditions similar to those used in our testing. The warning language reflects the agency's commitment to protect all students transported in all school buses, including those transported in small school buses.

\3\ A multifunction school activity bus is defined as a school bus whose purposes do not include transporting students to and from home or school bus stops. 49 CFR 571.3(b). (68 FR 44892; July 31, 2003)

NHTSA anticipates that any loss of seating space resulting from following the warning language will be negligible. We agree with comments submitted by Robert W. Markwardt, in which he states that seat loss can be minimized by optimizing seating patterns. By optimizing seating patterns, harnesses can be used while nearly maintaining the current occupant levels on school buses.

B. Warning Label--Required Language

The warning label limits the use of harnesses to school bus seats. UMTRI recommended that the warning language be amended to state, in part, ``Warning! This restraint must only be used on school buses when installed by attaching to the seatback. * * * This change, UMTRI argues, would reflect that some safety harnesses might be able to be installed in a more conventional manner, and thus be used on vehicle seats other than school bus seats.

The current label language is intended to discourage the use of seat-mounted harnesses on non-school bus seats. FMVSS No. 222, School bus passenger seating and crash protection, imposes seat back strength requirements on school bus seats that seats for other types of vehicles are not required to meet. In a crash, a non-school bus seat back might not be able to withstand the additional load applied to it by an attached, occupied child restraint.

If a manufacturer designs a harness that either attaches to the seat back or to the seat belt assembly, the warning label would only be required on the portion of the harness that attaches to the seat back. For a restraint that could be installed in a more conventional manner as well as with the seat wrap, the label's prominence would be reduced when the restraint was installed by the more conventional means. Further, the current warning language helps ensure that use of harnesses is limited to their intended use on school bus seats.

C. Other Warning Label Issues

The warning labels are required to be placed on the part of the restraint that attaches the harness to the vehicle seat back and must be visible when installed. Comments were received requesting that the

text of the warning require the label to be placed on the ``seat-mount.'' The ``seat-mount'' is the part of the restraint that attaches the restraint to the seat back. However, not all manufacturers may use the term ``seat-mount'' (e.g., the E-Z-On cam wrap). The rule language is written in general terms so as to be understood by all manufacturers.

Peter J. Grandolfo requested that the final rule require a warning label to be placed in the interior of school buses in order to educate transportation personnel. We agree with Mr. Grandolfo that it is important for all school bus operators to know about the safe uses of these harnesses. However, a label on every bus would serve no purpose in most situations, since the harnesses are not usually used in school buses. Accordingly, the agency is not mandating the label. If a State or individual district wanted to require such a label in its school buses, it may do so.

E-Z-On suggested that rear facing child seats used in school buses and all harness restraints currently in use be provided with similar warning labels. First, unlike a rear facing child seat, a harness restraint that attaches to the seat back of a school bus transfers the entire load of the occupant to the seat back. A rear facing child restraint attaches to the bus by means of a lap belt or LATCH and does not transfer a load to the seat back. The harness restraint thus presents a unique situation that NHTSA believes needs to be addressed by this label. Second, NHTSA does not have legal authority to mandate labels for seat mounts already in service. However, the agency believes that the label information is important for all seat mounted restraints and strongly encourages manufacturers to send labels voluntarily to owners of seat mounts that were manufactured prior to the label requirement.

D. Lap-Belt-Ready School Buses

This final rule makes no distinction between harness restraint use on lap-belt-ready school bus seats and school bus seats that are not lap-belt-ready. Bill Hanson from the Billings Montana Head Start program raised concern that school bus seats that are not lap-belt-ready may not be able to withstand the additional loading from the seat mount.

The agency is not aware of any problem with the real world usage of harnesses on non-seat-belt-ready seats. However, the agency is aware of seat failures during laboratory testing of harnesses with non-seat-belt-ready seats. Therefore, we continue to recommend the use of seat-belt-ready seats when transporting a child in any child restraint on a school bus. (See Guideline for the Safe Transportation of Pre-school Age Children in School Buses.) We note that some States already require that all child restraint

systems used in school buses must be used on seats that meet the requirements of FMVSS No. 210.

E. Test Conditions

S5.1.2(b) of FMVSS No. 213 requires that seat mounted harnesses:

Limit the resultant acceleration at the location of the accelerometer mounted in the test dummy upper thorax as specified in

part 572 to not more than 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

While Q'Straint stated that there might be a problem in meeting this requirement, it did not provide any data to support its claim. Our testing of school bus harnesses has not shown a problem meeting this requirement and we have no knowledge of such a problem from other sources. As such, this document does not amend this provision of the standard.

Q'Straint further suggested that that the testing procedure utilize an FMVSS No. 222 approved school bus seat. While use of a school bus seat may be more representative of real world usage, we are maintaining the use of an FMVSS No. 213 bench seat. Incorporating an FMVSS No. 222 school bus seat into the test procedure would require further testing to be performed and would need to be addressed through a separate rulemaking. At this time, we have no indication that the performance of the school bus harness would be different on an FMVSS No. 213 bench seat versus an FMVSS No. 222 school bus seat.

E-Z-On recommended changing the tightening tension requirements for testing the seat-mounted harnesses in order to replicate the tighter tensions recommended in the installation instructions. We are currently not aware of any data showing that the current tightening tension range negatively affects the performance of the restraint. Further, E-Z-On did not provide any data to support their request for a higher upper bound tightening range (67 N to 132 N). Therefore, we are not making revisions to the procedures as set forth in the Interim Rule.

Q'Straint requested a change to the table to S5.1.3.1(a) indicating the installation method by which a restraint must meet the applicable requirements. The commenter suggested that for a harness labeled per S5.3.1(b)(1) through S5.3.1(b)(3) and Figure 12, the figure should indicate seat back mount and child restraint anchorage system. FMVSS No. 213 does not require harnesses to be capable of attaching to a child restraint anchorage system (see S5.9(a)). Since the table specifies only the mandated methods of attachment, the change has not been made.

F. Emergency Evacuation and Use Difficulties

The agency is aware that use of seat-mounted harnesses may increase evacuation time for school buses. Rhonda E. Smith commented that in an evacuation drill in which students were restrained in harnesses, the evacuation time was 12 minutes. However, Ms. Smith did not provide details of the drill, such as the number of children in the bus, number of adult monitors or aides, bus size, number of children restrained by harnesses, etc. We are unable to determine if this drill was representative of real world scenarios. Further, there has been no indication that evacuation time has been a problem for those buses using the seat-mounted harnesses. If emergency evacuation were to become a problem, it would be better addressed on a case-by-case basis by the school districts and school bus transportation industry. Plus, if evacuation time were to be determined a problem, harness usage could be supplemented with alternative devices for transporting special needs students and pre-K students that are recommended by the agency's ``Guideline for the Safe Transportation of Pre-school Age Children in School Buses.''

Ms. Smith and Amy Nelson also raised concerns about the potential for difficulties arising from the use of the harnesses. Ms. Smith argued that other children might pull on the excess webbing on the seat

wrap and Ms. Nelson stated that children might choose not to remain restrained in the harnesses. The agency notes that commenters who have had experience in using the harness, including Wayne Clutter of the West Virginia Department of Education and Dee Jay Jennings of the Killeen Independent School District, did not cite such difficulties. Further, if such difficulties were to arise, other transportation options are available, such as forward facing child seats.

F. Use of Crotch Straps

Crotch straps prevent children from sliding forward in their seats, helping to prevent injuries in crash situations. Ms. Smith voiced concern that the process of caregivers restraining children with crotch straps may result in erroneous sexual abuse claims because of incidental contact with the child. In response to Ms. Smith's comment, Michelle Lupo commented that her staff has taught the children to get the crotch strap through their legs by themselves minimizing the need for staff to fasten the crotch straps and alleviating these types of concerns.

The December 2002 issue of Transporting Students with Disabilities (Volume 13) stated that crotch straps do not appear to be an issue with parents and school bus transportation service providers and recognized the benefits from using the crotch straps. The issue cited a court case in which a Federal district judge for the Eastern District of Pennsylvania ruled that a lawsuit could proceed against a school district and special care facility, in which a special needs student was strangled after apparently being improperly restrained in a four point harness (without a crotch strap). See, Susavage v. Bucks County Schools Intermediate Unit No. 22, 2002 U.S. Dist. Lexis 1274 (E.D. Pa. January 22, 2002).\4\

\4\ It has been reported that the lawsuit was settled in favor of the student's parents for $3.6 million dollars. See Elliot Grossman, Parties settle school bus strangulation case; disabled Quaker girl's death led districts to change policies, Allentown Morning Call, August 19, 2003.

Based on the benefits of the crotch strap and its reported acceptance by parents, we are maintaining the crotch strap requirement in S5.4.3.4(b).

V. Final Rule

This final rule excludes harnesses manufactured and sold for use on school bus seats from the prohibition in FMVSS No. 213 against child restraints that mount to a vehicle seat back. The regulation as set forth in the October 2002 Interim Rule, which temporarily sanctioned the manufacture and sale of seat-mounted harnesses for pupil and Head Start transportation, is adopted indefinitely. The devices must bear a permanent warning label to be excluded. See Figure 12, infra. The label must be placed on the part of the restraint that attaches the harness to the vehicle seat back, and must be visible when the harness is installed. It must contain a pictogram and the following statements: ``WARNING! This restraint must only be used on school bus seats. Entire

seat directly behind must be unoccupied or have restrained occupants.'' The reference in today's rule to ``school bus seats'' accommodates the possible use of seat-mounted harnesses on multifunction school activity buses as defined in Sec. 571.3(b) and alternate vehicles as defined by the Department of Health and Human Services. A school bus seat is a seat in a vehicle that meets FMVSS No. 222, ``School Bus Seating and Crash Protection'' (49 CFR 571.222).

To implement the exclusion, a definition of ``harness'' is added to the standard. The definition of a harness is

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``a combination pelvic and upper torso child restraint system that consists primarily of flexible material, such as straps, webbing or similar material, and that does not include a rigid seating structure for the child.'' In developing the definition, we considered the definition of a Type 3 seat belt assembly that FMVSS No. 209 once had.\5\ The definition was as follows: ``a combination pelvic and upper torso restraint for persons weighing not more than 50 pounds or 23 kilograms and capable of sitting upright by themselves, that is children in the approximate range of 8 months to 6 years.'' As noted previously, we consider the term ``harness,'' to be interchangeable with the term ``vest,'' which is commonly used to describe seat-mounted restraints.

\5\ The definition was removed in 1981, when the requirements for child harnesses were moved to Standard No. 213.

This rule also makes several other amendments to FMVSS No. 213 relating to the exclusion. The table to S5.1.3.1(a), which specifies the head and knee excursion requirements, is amended to include requirements for harnesses for use on school bus seats. The table to S5.3.2 is amended to indicate that harnesses labeled per S5.3.1(b)(1) through S5.3.1(b)(3) and Figure 12 must meet the relevant requirements of the standard when attached with a seat mount back.

In addition, the dynamic test procedures of the standard are amended to specify procedures for testing seat-mounted harnesses. The procedures had reflected attachment of add-on child restraints by a lap belt, lap belt and tether, lap and shoulder belt, and child restraint anchorage system. Seat-mounted harnesses are not attached by those means. Accordingly, S6.1.2(a)(1)(i)(A) and S6.1.2(d)(1)(ii) are revised to include specifications appropriate for the manner in which seat-mounted harnesses are attached.

This rule also amends FMVSS No. 213 by adding a requirement (S5.6.1.11) that the printed instructions accompanying these harnesses must include the warning statement: ``WARNING! This restraint must only be used on school bus seats. Entire seat directly behind must be unoccupied or have restrained occupants.'' The purpose of this requirement is to increase the likelihood that the seat back will not be overloaded during a frontal crash by the forward movement of unrestrained passengers who were sitting in the seat immediately behind the child restrained in a harness. As explained above, the term ``restrained'' refers to the use of any type of user appropriate vehicle restraint or child restraint system. This includes lap belts,

lap and shoulder belts, booster seats, child seats, and harnesses.

VI. Rulemaking Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ``Regulatory Planning and Review.'' This action has been determined to be ``nonsignificant'' under the Department of Transportation's regulatory policies and procedures. The agency concludes that the impacts of the amendments are so minimal that preparation of a full regulatory evaluation is not required. The rule will not impose any new requirements or costs on manufacturers, but instead will permit manufacturers to produce a type of harness if the harness bears a label regarding how the restraint should be used.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). I certify that the amendment will not have a significant economic impact on a substantial number of small entities. The rule will not impose any new requirements or costs on manufacturers, but instead will permit manufacturers to produce a type of harness, a seated-mounted harness, if the harness bears a label regarding how the restraint should be used. We anticipate that the seat-mounted harnesses will be sold to school districts and to other pupil transportation providers. NHTSA has learned of the existence of two manufacturers, both of which are small businesses. The agency believes that this rule will not have a significant impact on these businesses. Adding a warning label to a harness strap will cost approximately eight cents per harness. Since the cost of the label is minimal, purchasers will not be substantially affected by the rule.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This document does not establish any new information collection requirements.

D. National Environmental Policy Act

NHTSA has analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

E. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ``meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ``Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ``substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA may also not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

F. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement

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imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The agency searched for, but did not find any voluntary consensus standards relevant to this final rule.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a

Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $ 100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit http://dms.dot.gov.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirement, Tires.

PART 571--[AMENDED]

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In consideration of the foregoing, NHTSA amends 40 CFR part 571 as set forth below.
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1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

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2. Section 571.213 is amended by:
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(a) Amending S4 by adding, in alphabetical order, a definition of ``harness'';
0
(b) Revising the ``Table to S5.1.3.1(a)--Add-On Forward-Facing Child Restraints'', and revising S5.3.1 and S5.3.2 (including the table in S5.3.2);
0
(c) Adding S5.6.1.11;
0
(d) Revising S6.1.2(a)(1)(i)(A) and S6.1.2(d)(1)(ii); and
0
(e) Adding Figure 12 at the end of Sec. 571.213.
The revised and added sections read as follows:

Sec. 571.213 Standard No. 213; Child restraint systems.

* * * * *

S4. Definitions.

* * * * *

Harness means a combination pelvic and upper torso child restraint system that consists primarily of flexible material, such as straps, webbing or similar material, and that does not include a rigid seating structure for the child.

* * * * *

S5.1.3.1 * * *

Table to S5.1.3.1(a)--Add-On Forward-Facing Child Restraints

When this type of child restraint	is tested in	these excursion limits	is attached to the test	accordance with--	apply	seat assembly in the manner	described below, subject to	certain conditions
Harnesses, backless booster seats and restraints designed for use by physically handicapped children.	S6.1.2(a)(1)(i)(A)....	Head 813 mm;..... Knee 915 mm.....	Attached with lap belt; in addition, if a tether is provided, it is attached.					
Harnesses labeled per S5.3.1(b)(i)	S6.1.2(a)(1)(i)(A)....	Head 813 mm;.....	Attached with seat back					

through S5.3.1(b)(iii) and Figure 12.		Knee 915 mm.
Belt-positioning seats	S6.1.2(a)(1)(ii)	Head 813 mm; Knee 915 mm.
All other child restraints, manufactured before September 1, 1999.	S6.1.2(a)(1)(i)(B)	Head 813 mm; Knee 915 mm.
All other child restraints, manufactured on or after September 1, 1999.	S6.1.2(a)(1)(i)(B)	Head 813 mm; Knee 915 mm.

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	S6.1.2(a)(1)(i)(D) (beginning September 1, 2002).	
Attached to lower anchorages of child restraint anchorage system; no tether is attached.		
	S6.1.2(a)(1)(i)(A)	Head 720 mm; Knee 915 mm.
Attached with lap belt; in addition, if a tether is provided, it is attached.		
	S6.1.2(a)(1)(i)(C) (beginning September 1, 2002).	
Attached to lower anchorages of child restraint anchorage system; in addition, if a tether is provided, it is attached.		

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* * * * *

S5.3.1 Add-on child restraints shall meet either (a) or (b), as appropriate.

(a) Except for components designed to attach to a child restraint

anchorage system, each add-on child restraint system must not have any means designed for attaching the system to a vehicle seat cushion or vehicle seat back and any component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back.

(b) Harnesses manufactured for use on school bus seats must meet S5.3.1(a) of this standard, unless a label that conforms in content to Figure 12 and to the requirements of S5.3.1(b)(1) through S5.3.1(b)(3) of this standard is permanently affixed to the part of the harness that attaches the system to a vehicle seat back. Harnesses that are not labeled as required by this paragraph must meet S5.3.1(a).

(1) The label must be plainly visible when installed and easily readable.

(2) The message area must be white with black text. The message area must be no less than 20 square centimeters.

(3) The pictogram shall be gray and black with a red circle and slash on a white background. The pictogram shall be no less than 20 mm in diameter.

S5.3.2 Each add-on child restraint system shall be capable of meeting the requirements of this standard when installed solely by each of the means indicated in the following table for the particular type of child restraint system:

Table for S5.3.2

Means of installation				
Child restraint	Type of add-on child restraint system	Type 1 seat belt	Type 1 seat belt	Type II seat belt
Seat back	anchorage system	Seat assembly plus a tether anchorage, if needed	(effective September 1, 2002)	Seat assembly mount
Harnesses labeled per S5.3.1(b)(1) through S5.3.1(b)(3) and Figure 12				X
Other harnesses				X
Car beds			X	
Rear-facing restraints			X	
Belt-positioning seats		X		X

All other child restraints..... X X

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* * * * *

S5.6.1.11 For harnesses that are manufactured for use on school bus seats, the instructions must include the following statements:

``WARNING! This restraint must only be used on school bus seats. Entire seat directly behind must be unoccupied or have restrained occupants.'' The labeling requirement refers to a restrained occupant as: an occupant restrained by any user appropriate vehicle restraint or child restraint system (e.g. lap belt, lap and shoulder belt, booster, child seat, harness . . .).

* * * * *

S6.1.2 Dynamic test procedure.

(a) * * *

(1) * * *

(i) * * *

(A) Install the child restraint system at the center seating position of the standard seat assembly, in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the standard lap belt is used and, if provided, a tether strap may be used. For harnesses that bear the label shown in Figure 12 and that meet S5.3.1(b)(1) through S5.3.1(b)(3), attach the harness in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, i.e., the seat back mount is used.

* * * * *

(d) * * *

(1) * * *

(ii) All Type I belt systems used to attach an add-on child restraint system to the standard seat assembly, and any provided additional anchorage belt (tether), are tightened to a tension of not less than 53.5 N and not more than 67 N, as measured by a load cell used on the webbing portion of the belt. All belt systems used to attach a harness that bears the label shown in Figure 12 and that meets S5.3.1(b)(i) through S5.3.1(b)(iii) are also tightened to a tension of not less than 53.5 N and not more than 67 N, by measurement means specified in this paragraph.

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[GRAPHIC] [TIFF OMITTED] TR09MR04.023

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Jeffrey W. Runge,

Administrator.

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